

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PRENTICE MARSHALL,

Petitioner,

v.

CALVIN JOHNSON, et al.,

Respondents.

Case No.: 2:21-cv-02046-APG-BNW

Order Reopening Action, Granting Motion to Proceed in Forma Pauperis, Granting Motion for Appointment of Counsel, and Granting Motion for Leave to File Amended/Supplemental brief

[ECF No. 1-1, 1-2, 1-3, 4, 5, 7, 7-2]

I previously dismissed this case because petitioner Prentice Marshall did not comply with my order to either file an application to proceed in forma pauperis or pay the filing fee.¹ Two days later, Marshall paid the filing fee, filed a motion to proceed in forma pauperis, and attached a new petition to the motion.² The order and judgment dismissing the action and Marshall's payment, motion, and petition might have crossed in the mail. Consequently, I will reopen the case.

Marshall submitted a motion for appointment of counsel with his initial petition.³ Whenever the court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief.⁴ “[T]he district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.”⁵ Marshall is unable to

¹ ECF No. 4.

² ECF No. 6, 7, 7-2. ECF No. 7-1 does not exist.

³ ECF No. 1-2.

⁴ 18 U.S.C. § 3006A(a)(2)(B).

⁵ *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

1 afford counsel.⁶ Having reviewed the new petition, I find that appointment of counsel is
2 warranted.

3 Marshall submitted a motion for leave to file amended/supplemental brief with his initial
4 petition.⁷ I assume that the petition Marshall later submitted⁸ is that amended or supplemental
5 petition. The initial petition contained three grounds, and the new petition contains one ground.
6 I will assume that Marshall intended the new petition as a supplement. I am appointing counsel,
7 and treating the new petition as a supplement will preserve the grounds in the initial petition until
8 counsel likely files an amended petition.

9 I THEREFORE ORDER that my prior order and the judgment dismissing this action
10 (ECF No. 4, 5) are **VACATED**.

11 I FURTHER ORDER the clerk of the court to reopen this action.

12 I FURTHER ORDER that the motion to proceed in forma pauperis (ECF No. 7) is
13 **GRANTED**.

14 I FURTHER ORDER the clerk of the court to file the petition for a writ of habeas corpus,
15 the motion for appointment of counsel, and the motion for leave to file amended/supplemental
16 brief, currently in the docket at ECF No. 1-1, 1-2, and 1-3, respectively.

17 I FURTHER ORDER that the motion for leave to file amended/supplemental brief is
18 **GRANTED**.

19 I FURTHER ORDER the clerk of the court to file the petition for a writ of habeas corpus
20 currently in the docket at ECF No. 7-2 as a supplemental petition.

21
22 _____
⁶ ECF No. 7 at 1.

23 ⁷ ECF No. 1-3.

⁸ ECF No. 7-2.

1 I FURTHER ORDER that the petitioner's motion for appointment of counsel is
2 **GRANTED.** Counsel will represent the petitioner in all federal proceedings related to this
3 matter, including any appeals or certiorari proceedings, unless allowed to withdraw.

4 I FURTHER ORDER that the Federal Public Defender is appointed provisionally as
5 counsel for the petitioner. The Federal Public Defender will have 30 days from the date of entry
6 of this order either to undertake representation or to indicate to the court the office's inability to
7 do so. If the Federal Public Defender is unable to represent the petitioner, then I will appoint
8 alternate counsel, subject again to establishment of financial eligibility. I will set a deadline for
9 filing of an amended petition or a motion seeking other relief after counsel has appeared. I do
10 not signify any implied finding of tolling during any time period established or any extension
11 granted. The petitioner always remains responsible for calculating the limitation period of 28
12 U.S.C. § 2244(d)(1) and timely presenting claims. I make no representation that the petition, any
13 amendments to the petition, and any claims in the petition or amendments are not subject to
14 dismissal as untimely. *See Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

15 I FURTHER ORDER the clerk to add Aaron Ford, Attorney General for the State of
16 Nevada, as counsel for the respondents.

17 I FURTHER ORDER that the respondents' counsel must enter a notice of appearance
18 within 21 days of entry of this order, but no further response will be required from the
19 respondents until further order of the court.

20 I FURTHER ORDER the clerk to provide copies of this order and all prior filings to both
21 the Attorney General and the Federal Public Defender in a manner consistent with the clerk's
22 current practice, such as regeneration of notices of electronic filing.
23

1 I FURTHER ORDER that the requirements of Local Rule LR IC 2-2(g) are waived.
2 Paper copies of any electronically filed exhibits need not be provided to chambers or to the staff
3 attorney, unless later directed by the court.

4 DATED this 30th day of April, 2022.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE